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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,604	09/26/2005	Hans-Christian Swoboda	10191/3959	9654
26646	7590	03/18/2008	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				SHIN, SARAH S
4182		ART UNIT		PAPER NUMBER
03/18/2008		MAIL DATE		DELIVERY MODE
				PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/520,604	SWOBODA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	SARAH S. SHIN	4182

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 September 2005.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 1/7/2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/7/2005, 1/18/2008, 2/21/2008</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 1/07/2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The Search Report does not include an English language description of the references that are crossed out. It has been placed in the application file, but the information referred to therein has not been considered, except as noted.
2. The information disclosure statements (IDS) submitted on 1/18/2008 and 2/21/2008 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### ***Drawings***

3. The drawings are objected to because Figures 1 and 3 should be more clearly labeled. It is requested that the applicant insert more detailed descriptions/identification of the individual elements to facilitate the understanding of the figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. The disclosure is objected to because of the following informalities: Reference to "line 19" on line 8 of page 7 should be changed to "line 18". Also, there is no mention of which condition transition block 25 of Fig. 3 represents. Lines 14-19 of page 7 describe a relative speed-dependent minimum distance instance which does not correspond to a transition block in Fig. 3.

Appropriate correction is required.

5. Claims 1-8 have been cancelled by preliminary amendment.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 9, 10 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labuhn et al. (US 6,009,368) and further in view of Gilling (US 5,781,103).

With respect to claim 9, Labuhn discloses a method for notifying a driver of a motor vehicle equipped with an adaptive distance and speed controller, comprising: one of activating or deactivating a prompt which informs the driver that the vehicle is coming critically close to a target object (FIG. 4 and Column 8, lines 31-32, 36-43 and 52-53); wherein the activation or deactivation of the prompt occurs (FIG. 4 and Column 8, lines 66-67 and Column 9, lines 1-2) as a function of at least one of:

- i) a fixed minimum distance between a distance-controlled and speed- controlled vehicle and the target object (FIG. 4, block 411, where  $X_M$  is the minimum inter-vehicle spacing as described in Column 7, line 23)
- ii) a relative speed-dependent minimum distance of the distance-controlled and speed- controlled vehicle in relation to the target object (FIG. 4, block 411, where  $V_R \cdot T_B$  is the relative speed-dependent minimum distance as described in Column 3, lines 54-56), and
- iii) a maximum vehicle deceleration producible by the distance and speed controller (FIG. 4, block 423 where  $D_{MAX}$  is represents a deceleration limit as described in Column 9, lines 53-62).

a. Labuhn fails to disclose the prompt is a takeover prompt. However, Gilling discloses a method for notifying a driver of a motor vehicle equipped with an adaptive distance and speed controller, comprising one of activating or deactivating a takeover prompt which informs the driver that the vehicle is coming critically close to a target object (Column 2, lines 35-43). It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Gilling with Labuhn in order to notify the driver to intervene to avoid a possibility of a collision due to the capacity/limit of the adaptive distance and speed controller during driving of the vehicle (Column 1, lines 13-16 and Column 2, lines 32-38). For the purposes of the OA, the above

mentioned explanation of the “prompt” as taught by Gilling will apply to all occurrences of the phrase “takeover prompt” throughout claims 10-12 and 14-16.

With respect to claim 10, Labuhn discloses the prompt is at least one of: a visual display in a field of view of the driver, and an acoustic signal in an interior of the vehicle (Column 3, lines 63-65, Column 4, lines 2-7). See paragraph 8a above. Labuhn does not explicitly disclose the display is in a field of view of the driver and an acoustic signal is in an interior of the vehicle. However, it is well known that the vehicle instrument cluster or other display panel visual and/or audible alerting apparatus for operator interfacing provides visual display in a field of view of the driver and an acoustic signal in an interior of the vehicle as the operator is inside of the vehicle while operating the vehicle (Column 3, lines 63-64, Column 4, lines 5-7).

With respect to claim 12, Labuhn discloses activation thresholds and deactivation thresholds of the prompt are not identical (FIG. 4, Column 8, lines 18-31). See paragraph 8a above.

With respect to claim 13, Labuhn discloses the distance and speed controller emits and receives radar signals, with the aid of which preceding vehicles can be recognized as target objects (Column 1, lines 27-29, Column 3, lines 50-57).

With respect to claim 14, Labuhn discloses a device for the distance and speed control of a motor vehicle (Column 2, lines 62-64 and Column 3, lines 10-12, 50-54), comprising:

an arrangement which outputs a prompt, informing a driver that the vehicle is coming critically close to a target object (FIG. 4 and Column 8, lines 31-32, 36-43 and 52-53), the arrangement being configured so that activation and deactivation of the takeover prompt occurs (FIG. 4 and Column 8, lines 66-67 and Column 9, lines 1-2) as a function at least one of:

- i) a fixed minimum distance between the distance- and speed-controlled vehicle and the target object (FIG. 4, block 411, where  $X_M$  is the minimum inter-vehicle spacing as described in Column 7, line 23),
- ii) a relative speed-dependent minimum distance between the distance- and speed-controlled vehicle and the target object (FIG. 4, block 411, where  $V_R \cdot T_B$  is the relative speed-dependent minimum distance as described in Column 3, lines 54-56), and
- iii) a maximum vehicle deceleration producible by the distance and speed controller (FIG. 4, block 423 where  $D_{MAX}$  is represents a deceleration limit as described in Column 9, lines 53-62). See paragraph 8a above.

With respect to claim 15, Labuhn discloses a display device, the display device displaying the prompt in a field of view of the driver (Column 3, lines 63-65, Column 4, lines 2-7). See paragraph 8a above. Labuhn does not explicitly disclose the display device is in a field of view of the driver. However, it is well known that the vehicle

instrument cluster or other display panel visual and/or audible alerting apparatus for operator interfacing provides visual display in a field of view of the driver as the operator is inside of the vehicle while operating the vehicle (Column 3, lines 63-64, Column 4, lines 5-7).

With respect to claim 16, Labuhn discloses an acoustic device, the prompt being about output as an acoustic signal by the acoustic device in an interior of the vehicle (Column 3, lines 63-65, Column 4, lines 2-7). See paragraph 8a above. Labuhn does not explicitly disclose the acoustic device is in an interior of the vehicle. However, it is well known that the vehicle instrument cluster or other display panel visual and/or audible alerting apparatus for operator interfacing provides an acoustic signal in an interior of the vehicle as the operator is inside of the vehicle while operating the vehicle (Column 3, lines 63-64, Column 4, lines 5-7).

With respect to claim 17, Labuhn discloses a radar device, the radar device configured to emit and receive radar signals so that a preceding vehicle can be recognized as a target object (Column 1, lines 27-29, Column 3, lines 50-57).

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Labuhn et al. (US 6,009,368) and Gilling (US 5,781,103) as applied to claim 9 above, and further in view of Kakinami et al (US 5,230,400) and Tabata et al. (US 6,178,372).

With respect to claim 11, Labuhn and Gilling fail to disclose the takeover prompt is further output when the driver overrides the distance and speed controller. However, Kakinami discloses the takeover prompt is further output when the driver overrides the distance and speed controller (Kakinami Column 8, lines 11-23, 56-60, 65-67 and Column 9, line 1). It would have been obvious to one skilled in the art at the time the invention was made to combine the teachings of Kakinami with Labuhn in order to warn the driver the controller no longer has control over the distance and speed of the vehicle and so the driver must take control and operate the vehicle properly according to the driving situation as disclosed by Tabata (Tabata Column 4, lines 40-42, Column 7, lines 45-47, Column 24, lines 54-59 and Column 31, lines 12-16). See paragraph 8a above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH S. SHIN whose telephone number is (571)270-1812. The examiner can normally be reached on Mon-Fri, 7:00AM-4:30PM Alt. Fri, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571-272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 5, 2008  
/Sarah S Shin/  
Examiner, Art Unit 4182

/Thu Nguyen/  
Supervisory Patent Examiner, Art Unit 4182